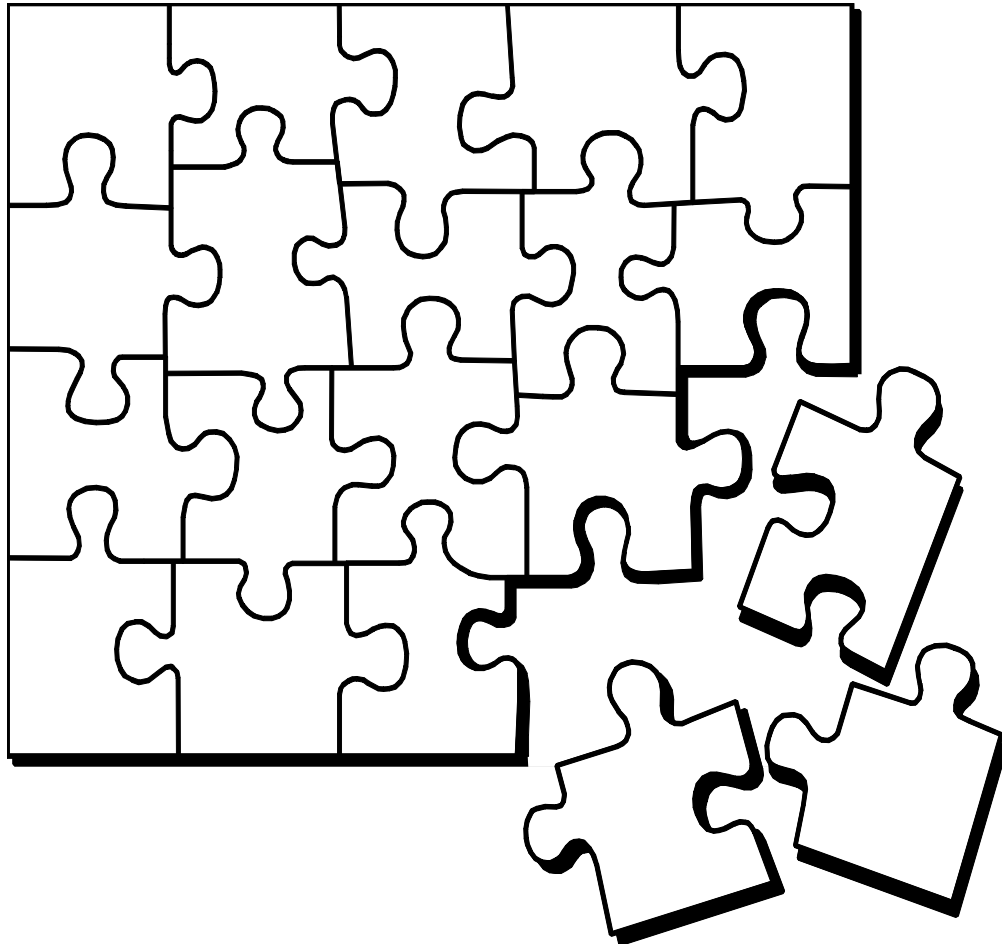


REPRESENTING YOURSELF IN COURT

A guide to help you find the missing pieces to the puzzle of the legal system



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INTRODUCTION: REPRESENTING YOURSELF IN COURT

This booklet provides general information about representing yourself in Court (In Pro per). It is not intended to take the place of legal advice provided by an attorney.

I. GENERAL INFORMATION

Filing Court Papers:

To start a court action, certain papers must be filed with the Court Clerk. Papers must also be filed when answering the other party. Filing simply means that a document is accepted by the Clerk and made part of the official record.

Seating/Court Staff:

The Petitioner or Plaintiff usually sits nearest the jury box and the Respondent or Defendant usually sits furthest from the jury box. In court rooms without a jury box the Petitioner/Plaintiff usually sits closest to and directly across from the witness stand. However, if the Judge directs you to a seat, sit there. In Court, there will be a Judge, a Court Technician (or Court Clerk), and possibly a Court Reporter (who records the proceedings) and Bailiff. With few exceptions, hearings are usually open to the public, so there could also be people in the courtroom just to watch the proceedings.

Procedure:

Both parties will be given the opportunity to present an opening statement. If you choose to do so, be as brief as possible. Don't state your whole case. Keep it to a few sentences generally explaining what your facts are and highlighting the evidence you intend to prove. It is very helpful to have written out your opening statement ahead of time.

Important: An opening statement is not testimony nor evidence and whatever you propose here must be backed up with evidence during the case. Only testimony, given under oath, will be on the record, admitted and considered. The opening statement is like a roadmap – it simply tells the court where you intend to go with your case.

Example: “This is a divorce case with continued, extensive domestic violence. Custody is being contested, but there is no property to divide because he sold it all for drugs. My witnesses and evidence will show that it is in the best interest of the children to award custody to me.”

Some Judges will have the parties sworn in as soon as the hearing starts, and some Judges will have you sworn in when it is your turn to give testimony.

After the opening statements, the Petitioner/Plaintiff presents his/her case first by calling witnesses to testify and by submitting evidence. The Respondent/Defendant presents his/her case next. The Petitioner/Plaintiff has the final response.

You will have the opportunity to question, or cross-examine, the other party's witnesses, and the other party will have the opportunity to cross-examine your witnesses. After the opposing party has cross-examined your witness, you will have the opportunity to ask your witness “re-direct” questions to clarify any testimony given on cross-examination. The opposing party has the opportunity for re-direct as well. See Section “III. Witnesses” below for additional information and examples of questioning witnesses.

After the parties have presented all of their witnesses and evidence and the plaintiff has had the opportunity for “rebuttal”, each party will be given the opportunity for a closing statement. Limit the closing statement to a few sentences summarizing what you think your evidence proves and what you are asking the Judge to order. Don’t repeat everything you said during the hearing.

II. BE PREPARED

There are many rules to know when going to court and the three main rules are: **Prepare, Prepare, Prepare**. Remember, no one can be over prepared for court. Beyond reviewing the law and determining how that law affects your case, there are some basic principles to keep in mind:

Presentation:

Be comfortable, but appear proper and respectable. See page 23.

Respect:

Be on time. Plan to arrive 10 to 15 minutes early and check in with the Judicial Assistant. Notify the Assistant if you have to step outside or use the restroom. Often, there are many cases set at one time and they can be called in any order.

Don’t use foul language, don’t raise your voice.

Address the judge properly as “Your Honor”.

DO NOT ARGUE WITH THE JUDGE OR THE OPPOSING PARTY!!

If you have an objection to a witness, question or evidence, stand up and say “Objection”, and state the basis for your objection, such as irrelevant, hearsay, etc. The objection is stated directly to the Judge and never to the other party or their attorney. The Judge is like a traffic controller and will decide what questions, answers and other evidence are appropriate under the rules.

Relax:

It is next to impossible not to be nervous, but thorough prior preparation will help reduce your anxiety.

Pronunciation:

Speak loudly enough to be heard and as clearly as possible -- Court proceedings are either recorded on tape, or by a Court Reporter. Only one person at a time should speak. Do not merely nod or shake your head, grunt “uh-huh”, etc., but clearly speak your response. If you are soft spoken, you may need to make extra effort to speak loud enough for everyone in the courtroom to hear.

Honesty:

It is absolutely required that everyone tell the truth. Dishonesty detected will ruin your case.

Evidence:

Bring all documents that have been filed or received to date. Arrange them chronologically, or in a sequence that makes sense to you. This way you can easily find any document that you may need.

If you want to present documents as evidence, make sure they are marked as Exhibits by the Court Clerk before the start of the hearing. Not all documents can be admitted into evidence because they may not meet the Rules of Evidence. For example, a letter written on your behalf by someone not there to testify is generally inadmissible as “hearsay.” Normally, documents in the other party’s handwriting are admissible, as are certified court documents (e.g. DUI conviction), and certain contracts.

Before documentary evidence is admitted, you must be able to lay a foundation by testimony what the document is and its relevance.

Write It Down:

Write down what you need to have the Judge hear and see in order for the Judge to rule in your favor. First, **what** are asking for? **Why?** **Who** can testify in support of those reasons? **What** documents or things support those reasons and **who** can testify that those documents or things are what you say they are? Once you have decided these things, make an outline of the order you will present your evidence and what fact about each piece of evidence is going to help the Judge decide for you. For example: Susan M. Jones -- Will show I take better care of the children than Joe and I should get custody of them.

Prepare a written outline to check off as you go through the hearing. Also, if you want to give an opening or closing statement, write it out beforehand, but remember, BE BRIEF!

Write out the questions that you are going to ask your witness. Be sure you know the answer your witness is going to give. It is okay to talk to your witnesses before a hearing. You need to know what they will say. Don’t ask a witness if he knows your spouse drinks if he/she is going to say “No, but I saw you drunk every weekend!”

Write down any issues that you can settle so that you have all the terms correctly stated. Then the judge will only have to hear and decide matters relating to the issues you have not been able to resolve. For example, maybe you can decide who gets what property and who pays what debts but can’t agree on custody of the children.

General Points:

Don’t rely on legal advice given to you by friends, family, neighbors, police officers, or other non-attorneys. Only a licensed attorney can represent you at your hearing, if you do not represent yourself. Do not take your well-educated and experienced neighbor to speak for you at the hearing as the Judge cannot allow it.

Know what documents you filed and the details contained in them. This is particularly true if your documents were prepared by someone else, like a paralegal service. Remember, you signed them, and you are responsible for what is alleged and requested in them.

There are many statute of limitations (time limits) to be aware of in court actions. Some of the more common time limits include:

Serving the opposing party after filing a complaint/petition (120 days)
Answering the Complaint – 20 or 30 days, depending on in/out of state service
Serving a Disclosure Statement (within 45 days of service)
Inactive calendar if there is no activity in 6 months.

If you are using a form packet, be sure to read and follow the instructions. If you get to your final hearing and have not filed a proof of service, your hearing will not proceed. Be sure all steps you need to take have been completed.

Watch your time limits. If the time scheduled for your hearing is one hour, you need to narrow down the issues to what is important and get in your most important witnesses. Don't spend half an hour pleading your whole case in the opening statement.

If there is a concern about physical danger from the other party, notify the Court Clerk, or Bailiff and request a separate waiting area, or that a Bailiff be present. Otherwise, while waiting, you may discuss settlement with the opposing party. Be prepared to be instructed by the Judge to go outside and try to work out areas you can agree on. *This does **not** apply in domestic violence cases. The Judge should be advised, prior to any hearing, if there are any domestic violence issues.*

A. TRIAL SEQUENCE (non-jury)

1. Case Called
2. Opening statement by plaintiff. (May be waived.)
3. Opening statement by defendant. (May be waived or reserved until start of defense case.)
4. Plaintiff's Case.
 - a. Direct examination of witness by plaintiff.
 - b. Cross-examination of witness by defendant.
 - c. Re-direct examination of witness by plaintiff.
 - d. Each subsequent plaintiff witness is handled in the same way.
 - e. Plaintiff rests his case.
5. Motion for judgment by defendant if it feels plaintiff has failed to meet the burden of proof; response by plaintiff; rebuttal argument by defendant; ruling of court.
6. Defendant case. (Defendant may give opening statement, if previously reserved. Defendant may choose not to put on any evidence.)
 - a. Direct examination of witness by defendant.
 - b. Cross-examination of witness by plaintiff.
 - c. Re-direct examination of witness by defendant.
 - d. Each subsequent defense witness is handled the same way.
 - e. Defendant rests its case.
7. Plaintiff's rebuttal case. (May only rebut defense testimony; may not introduce new evidence which was inadvertently forgotten.)

- a. Direct examination of witness by plaintiff.
 - b. Cross-examination of witness by defendant.
 - c. Re-direct examination of witness by plaintiff.
 - d. Each subsequent rebuttal witness is handled in the same way.
 - e. Plaintiff rest his rebuttal case.
8. Final argument by plaintiff. (May be waived, but should reserve right to make rebuttal argument to defense final argument.)
 9. Final argument by defendant. (May be waived.)
 10. Rebuttal argument by plaintiff. (May only rebut argument of defendant.)
 11. Verdict.

B. MECHANICS OF PRESENTING A CASE

A hearing or trial is your opportunity to tell the judge the important **FACTS** of your case. **FACTS** are what you can sense with your five senses: what you saw, heard, felt, smelled or tasted and are used to tell what happened. The judge listens to your story and the other side's story and then makes a decision based on what the law says about the facts that are presented.

Tell your story through presenting evidence

- witness testimony
- physical evidence: documents or photographs

Test the other side's evidence (Cross exam)

Present your evidence as required under the Rules:

Arizona Rules of Civil Procedure & Arizona Rules of Evidence

FIRST YOU MUST PREPARE YOUR CASE.

- 1) What Are You Trying to Prove?

Think about your goal and how you can get there. Develop your grounds to prove, with facts, your case.

Negative example:

Person in divorce/child custody case. Brings in 85 different letters and documents, photographs to show what a bad person their spouse is. Cranky in morning. Bad bill-payer. Had an affair with the neighbor. Wrong political party.

Nothing relevant to child custody.

Rule No. 1: Always look to the law.

Child custody -- Look at child custody factors

Criminal case -- what does the law require the prosecution to prove? Each crime has elements the prosecutor must prove beyond a reasonable doubt.

Landlord/Tenant Eviction case: What must the landlord present? How does the tenant defend.

Rule No. 2: All evidence presented must prove or disprove something legally required. (Like building a wall, every brick goes towards completing the wall)

Example: Bill paying has nothing to do with child custody.

However, law says evidence of domestic violence or drunk driving applies in custody cases:

- Get certified records of domestic violence convictions (one brick)
- Get certified records of DUI convictions (another brick)
- Get other side to admit convictions (two bricks)

Evidence of how good a parent you are is relevant.

- Mom of the year award
- Primary caretaker
- I take kids to doctor, dentist, day-care, etc.

Rule No. 3: Develop a theme of your case.

You will not have evidence to present on every factor or every part of the law. **PICK THE MOST IMPORTANT ONES.** Often only two or three, sometimes only one.

Examples of themes:

Child Custody Theme. I have always been there for the children.

Unfortunately, other parent has not.

Bricks:	Primary caretaker,	
	Emotional support	
Other parent's absence:	through drinking	
	Always working, etc.	

Rule 4: Prove your case with witnesses and evidence supporting your themes.

Your Witnesses: People who have observed something regarding your theme.

(Neighbor who saw other parent driving drunk with kids in car)

Criminal defense: Alibi witness. Person who can tell judge that on the night in question you were playing poker with your buddies.

Important points about witnesses:

- Judge's don't want to have children testify. (Perhaps through an expert counselor, therapist, etc)
- Judge the credibility of your witnesses.
(Is it a blind person saying the light was red?)
Does your witness have felony convictions for extortion, bribery, fraud or perjury?)

Each witness must have seen or observed something important to the case. (Can't be someone who heard from someone that the father is using drugs. Can be someone who saw him using drugs or who heard father admit he is using drugs).

Exhibits: Can be documents, writings, photographs, etc.

- Don't bring 85 (70 of them won't matter)
- Don't bring letters of support to court (hearsay)
- Admission of a party opponent:
You can bring letters the other side has written:
"Honey, I've gotta break this meth habit and stop beating you."

Authentication: You generally need a witness with personal knowledge about the exhibit. "Yes, this is Hank's handwriting. I received this letter in August of last year. Here is what he says."

"This photograph shows the intersection of Birch and San Francisco from the west, just before the semi hit the courthouse. I know, because I work in the courthouse."

Exceptions: Certified court documents
Newspaper articles or Scholarly articles and books

III. WITNESSES

You can and should bring witnesses with you to Court to testify on your behalf. Make sure that they are dressed appropriately. A hand written note from a person is not a substitute for a witness, even if it is notarized (hearsay). Under limited circumstances, a notarized affidavit might be accepted, but remember that nothing takes the place of a witness being before the Judge to tell in their own words, things that they have seen or heard. Another reason affidavits are not sufficient is because the opposing party can't cross-examine an affidavit.

Before your court date, make sure that for each witness (yours and the opposing party's, if known) you write out the following:

- 1) What issues can the witness testify to?
- 2) What questions do you want to ask the witness?
- 3) What do you expect the answer to be?

Generally, you do not want all of your witnesses to testify to the same thing. One or two for each issue is sufficient. You should also try to meet with your witnesses beforehand to go over their testimony. **A good rule is that you don't ask a witness any question to which you don't already know the answer.**

If you don't get the answer you are expecting from a witness, whether your witness or the other party's witness, do not argue with them or accuse him/her of lying. If the witness refuses to answer the question, ask the Judge to make the party answer. The Judge will decide if the witness must answer. Finally, questioning a witness is not the time for your testimony. You must ask questions, and should keep them as brief as possible. In addition, ask your question, then wait for the witness to respond. Do not ask more than one question at a time.

Subpoenas:

If a witness does not want to appear, you can have a subpoena issued which will require his/her attendance. There is a fee for issuance of the subpoena which may be deferred if you qualify as low income and have requested a fee waiver from the Court. Check with the Clerk when you have to have

the subpoena issued. A witness fee of \$12.00 must be offered to the witness, plus mileage (currently \$.20 per mile) one-way to the Courthouse, or the Judge may not enforce the subpoena.

Service of Subpoenas:

A subpoena must be served on the witness, not merely mailed or left on the doorstep. Any person over the age of 18 who is not party to the lawsuit can serve the subpoena and witness fee. A notarized affidavit of service must be prepared showing the date, place and time of service as well as who served the subpoena. The Affidavit of Service must be filed with the Clerk's office prior to the hearing.

A. SUGGESTIONS TO WITNESSES

Here are some practical suggestions on what to do when you are asked to serve as a witness.

1. If you are going to testify about an event that happened months or even years ago, try to refresh your recollection. It may help to return to the place where the event occurred. Try to picture the scene noting the location of physical objects and approximate distances. If you gave a written statement ask to see it. Talking with others who were there may help to recall details. However, do not try to develop a common story. Your testimony must be what you recall, not what someone else told you.
2. If you are going to testify about records, become familiar with them. You should know what the records contain and be able to refer to them easily while on the witness stand. You should be familiar with procedures for making and keeping the records. You may be asked to authenticate them as records made and kept in the regular course of business.
3. Dress neatly as if going to church or other professional event. This shows respect to the Judge and the legal process. It is inappropriate to wear bathing suits, see through tops, no bra, shorts, tank tops, dirty clothing or message T-shirts (e.g. "Legalize Marijuana").
4. If you received a subpoena, take it with you. It tells you where to be and when. If you have received a subpoena duces tecum, it will tell you to take certain documents or other things with you.
5. When you arrive at the courtroom, find the attorney who subpoenaed you. If you must wait for a trial in progress it is usually best to remain outside the courtroom. If you are going to wait outside the courtroom, let the clerk know you are present and where you will be.
6. It is proper for the attorney to discuss your testimony with you. If you are producing records, do not turn them over to the attorney until your attorney or the judge tells you to do so.
7. Avoid any undignified behavior such as loud laughter from the moment you enter the courthouse. Smoking and gum chewing are not permitted in the courtroom.
8. When you are called as a witness, stand upright while taking the oath. Pay attention and say "I do" clearly so that all can hear. Try not to be nervous; there is no reason to be.
9. On the witness stand you are sworn to tell the truth. Tell it!

10. Talk to the judge or jury, if there is one. Look at them most of the time and speak to them frankly and openly as you would to a friend. Do not cover your mouth with your hand. Speak clearly and loudly enough so that the farthest juror can hear you easily.
11. Speak in your own words. There is no need to memorize your testimony. In fact, memorization is likely to make your testimony sound “pat” and unconvincing. Be yourself.
12. Listen carefully to each question and make sure you fully understand it before you answer. Have the question repeated if necessary. If you still do not understand it, say so. Never answer a question that you do not understand or before you have thought through your answer.
13. Answer directly and simply, with a “yes” or “no,” if possible. Answer only the question asked, then stop. Do not volunteer additional information. Otherwise, your answer may be objectionable and may cause you to appear biased. If, an explanation is required, say so. Sometimes an attorney will try to limit you to a “yes” or “no” answer. If that happens, and you cannot answer the question “yes” or “no,” simply say so. Often the judge will let you explain. In any event, the judge or jury will get the point.
14. The judge or jury only wants the facts that you yourself have observed, not what someone else told you. Nor are they interested in your conclusions or opinions. Usually you will be unable to testify about what someone else told you, and only “expert” witnesses are allowed to give their conclusions and opinions.
15. When possible give positive, definite answers. Avoid saying “I think,” “I believe,” or “In my opinion” when you actually know the facts. But if you do not know or are not sure of the answer, say so. There is nothing wrong with saying “I don’t know.” You can be positive about the important things without remembering all the details. If you are asked about details that you do not remember, just answer that you do not recall.
16. Do not exaggerate. Be wary of broad generalizations that you may have to retract. Be particularly careful in responding to a question that begins, “Wouldn’t you agree that . . . ?” Do not let an attorney trap you into agreeing with a broad generalization, part of which you do not agree with or which is misleading.
17. If your answer was wrong or unclear, correct it immediately. It is better to correct a mistake yourself than to have the opposing attorney discover an error in your testimony. If you realize that you have answered incorrectly, say “May I correct something I said earlier?” Or “I realize now that something I said earlier should be corrected.”
18. Stop instantly when the judge interrupts or the other party objects. Do not try to sneak in an answer.
19. Usually, you should not ask the judge for advice. It is your attorney’s job to object to improper questions. If you do not have an attorney, the judge or opposing attorney will object improper questions.
20. Always be polite even if the attorney is not. Do not be argumentative or sarcastic. The attorney has a big advantage since he asks the questions.

21. The honest witness has nothing to fear on cross-examination. Some of these suggestions may make more sense if you understand the purpose of cross-examination. If your testimony has not been harmful to an attorney's case or if he thinks that questioning you further will prove fruitless, he may waive cross-examination or ask a few perfunctory questions. If, however, your testimony has been damaging to his client, the attorney will want to argue to the judge or jury that they should not believe you. To make that argument, he wants to make it appear that you are a liar or that you do not know what you are talking about. In either case, the usual approach is to try to get you to say things that the attorney can show are not completely true. He will then argue: "Since the witness lied or was wrong on this point, his entire testimony is unworthy of belief."
22. A favorite "trick question" of lawyers is: "Have you talked to anybody about this case?" If you say "No," the judge or jury will think that probably you are not telling the truth, because a good lawyer always talks to his witnesses before they testify. Simply say that you talked to whomever you did – the lawyer, the police, or anyone else.
23. Testifying for a substantial length of time can cause fatigue, crossness, nervousness, anger, careless answers, and a willingness to say anything in order to leave the witness stand. If you feel these symptoms, strive to overcome them, or ask the judge for a five-minute break or to allow you to have a glass of water.
24. These few suggestions cannot possibly tell you everything there is to know about testifying. If you have questions about testifying ask your attorney or the court clerk.
25. Look at your case and write down the good points and bad points, take a broad view of the case.

B. DIRECT AND CROSS-EXAMINATION EXAMPLES

The following is an example of "Mary" questioning her witness, Sue, who is her babysitter. The first question in each set is called a "leading" question, because it gives the witness the answer you want them to say. Leading questions are not allowed in direct examination. The bolded text is the proper way to phrase your direct examination questions.

While leading questions are not allowed during the direct examination, you can use leading questions when you cross-examine witnesses.

WRONG FOR DIRECT/OK FOR CROSS

- Q. Do you live in Kingman, Sue?
 A. Susan M. Jones, 1234 First Street, Kingman, Arizona.
- Q. Do you babysit out of your home?
 A. I provide day care services through my home.
- Q. Is it true you've provided day care for 15 years and raised 6 kids?
 A. I have taken some child care classes through the college. I've been doing day care for 15 years and I raised six kids of my own.
- Q. How long have you watched my two children, John and Jackie?
 A. Yes, I do.

RIGHT FOR DIRECT

- Please tell the judge your name and address.**
- Where are you employed?**
- Do you have any special training to care for children?**
- Do you provide day care for my two children, John and Jackie Smith?**

Q. Have you been watching my children for three years?

A. Three years.

How long have you provided day care for my two children?

Q. Do I usually have to drop the kids off and pick them off?

A. You do.

Who usually drops the children off and picks them up from day care?

Q. Does Joe ever help?

A. Yes, a couple of times, maybe three or four times.

Has their father, Joe Smith, ever dropped the children off or picked them up?

Q. Did you ever see Joe drunk?

A. Yes, when he dropped them off I smelled alcohol and he was staggering. He couldn't seem to keep his balance. I remember noticing this especially because it was only 10:00 in the morning. The last time he dropped them off he hit my mailbox with his car and that was when I told you I didn't want him here anymore.

Did you make any observations about Mr. Smith at those times?

Q. Did he smash your mailbox to pieces in February?

A. About a month ago. I believe it was Thursday, February 22, 1996.

Was there an incident involving your mailbox?

Q. Did the kids hate it when he, Joe, dropped them off?

A. They would be very quiet for a long time. They would also be hungry and not very clean. Their hair wasn't brushed or combed.

How were the children when Joe would drop them off?

Q. Are they much better when I drop them off?

A. They are always clean, fed and more importantly they are happy. They come in and play with the other children. There is a noticeable difference.

How are they on the days when Joe does not bring them?

Q. Did Joe make the kids feel bad when he picked them up?

A. They didn't seem anxious to go with him, but he would yell at them to hurry up and get in the car or they'd be sorry. They would put their heads down and slowly go to the door to leave with him. They seemed scared of him.

How did the children act when their father would pick them up from day care?

Q. Weren't they a lot better when I picked them up?

A. They're always happy to see you. They holler out "Mommy" and run to you at the door.

How were the children when I picked them up?

Q. Overall, wouldn't you say I was the better parent?

A. You seem to be very loving and kind to the children. You seem patient with them and they genuinely seem to love you.

Based on your observations of my interaction with the children, how would you characterize our relationship?

Q. And Joe isn't, is he?

A. Like I said, they seemed scared of him.

Based on your observations of Joe's interaction with the children, how would you characterize their relationship?

Thank you. I have no further questions.

IV. PRESENTING EVIDENCE

Bring the original (or certified copy) and two copies of any documents that you want to admit as evidence. The Court will keep the original, you will provide one copy to the opposing party and keep one for yourself. The evidence will not be given back to you, so make sure you have the copies made.

Organize your evidence into a sequence that makes sense to you. The opposing party will be asked if he/she objects to the evidence being admitted and why. The Judge will rule on whether or not to admit the evidence.

Determine “What does this show the Court”, “what issues does it relate to”. *Don’t assume that the Judge is going to know that your written day care records show that your child is in day care for 15 hours a day when your spouse has him, and 6 hours a day when you have him.*

If you have trouble getting copies of police reports, especially for domestic violence incidents, contact the Coconino County Victim Witness Program for assistance. Police Report are public records obtainable through the local law enforcement agency for a small fee.

A. DIRECT EXAMINATIONS

Direct examination is the part of a hearing or trial where you present your case in chief. A good direct examiner is like a **film director**. You must plan a logical story to your case and organize and prepare your witnesses to fit into that story. Write out direct exam questions or points. It is a creative art. Here are some fundamentals of direct examinations:

- prepare the witness (practice)
- tell your witness the only person who is important in the room is the judge (or jury) and to look at him or her while telling the story.
- if your witness is nervous ask them if they are nervous (ice breaker)
- use simple, carefully chosen language
- organize logically (usually sequentially) establish background of witness, what occurred
 - just before, during and then after. Use short questions that describe specific time slots.
- when changing subject say for e.g. “let’s talk about child support.”
- do not lead the witness, use open ended questions (what did you see, do, hear, what happened next, etc. Have the witness explain.
- listen to answers
- sit while you are in direct exam when possible
- control your witness

Anticipate Objections. Be prepared for the type of objection and the understand the rule of evidence and the exception you will be arguing.

Special problems include:

Conversations are often subject to **hearsay** objections. Ask yourself if the statement is offered to prove the truth of the matter asserted. If so, you may have a hearsay problem.

- Statements of the opposing party are non-hearsay and are always admissible.
- Memorize exceptions to the hearsay rule like present sense impressions, excited utterances, etc.
- When introducing a conversation always establish a “foundation” when, where, who was present, who said what.
- In telephone conversations witness must recognize voice.

Introducing Records commonly requires an “authenticating witness.” This person establishes foundation requirements to get the record admitted, then he or she can read the record and explain its import. Due to our limited budgets it is often best to stipulate to the introduction of certain records without an authenticating witness.

Lay Witness Opinions. Normally opinions of a lay (not expert) witness are not allowed. Expert opinions are allowed if the expert is qualified. However, there is a whole class of lay opinion evidence that is admissible. This often includes opinions on age, speed, sobriety, handwriting, etc.

Adverse Witnesses. Sometimes you may want to call a hostile person or even the opposing party as a witness. Rule 611(c) allows you to request the court treat the witness as a hostile witness allowing you to ask cross examination type (leading) questions.

B. REDIRECT

This is your change to try to clarify or reverse any damaging or misleading testimony brought out on cross-examination. Rehabilitate your witness by clarifying and explaining things that came up in the cross exam. Redirect can elicit the reasons for a witnesses conduct, or may bring out the rest of a conversation or story.

Example: Question: “Why didn’t you report to the police that your husband broke your nose?”
 Answer: “He has repeatedly beat me whenever I told anyone. He told me he would kill me if I talked to the police.”

Re-direct is the time to ask your witness if there is any final point that came up in the cross exam they would like to clarify.

C. CROSS EXAMINATION

Prepare, prepare, prepare. These people are not friendly to your cause. You **MUST** control them. Preparation must involve:

- deciding whether to cross examine (will the testimony hurt you?)
- deciding what testimony will help you
- deciding how you can tear down harmful testimony
- gathering impeachment evidence and witnesses

Write out your points of cross examination or the actual questions.

Anticipate possible objections and responses.

Set up “the backboard” get the witness to commit to the lie.

Have documents ready to impeach.

Set the boundaries. You can explain that the witness is to answer only the questions and that they have an opportunity to explain later in re-direct.

Always stand up in cross examination if possible. Own the courtroom. You should be the focus of attention. Project confidence and absolute belief in your client. Appear friendly and supportive of your client.

Never ask questions. Make SHORT statements of fact and get the witness to agree with you. At a minimum don’t ask a question you don’t know the answer to. Cross exam is slowly built so don’t make your big points in one question. Enjoy it!

Structure of the X exam includes: Establish as few basic points as possible. Perhaps only three points. Stick with the strongest point. Make strong points at beginning and end of cross exam. If your questions vary by subject matter you may confuse or hide the purpose of your question to the witness. Don’t repeat the direct exam, except get them to repeat portions of the direct that were helpful to you.

Listen to the answers. All too often questioners simply read their questions without really hearing the answers. By carefully listening to the response you may learn information that will take you in a totally new and unexpected direction. You may need to go after a witness if you receive new information. Don’t argue with the witness.

If the direct examination left something out, you might not want to cross examine, because it will just be added on redirect.

D. DISCREDITING THE WITNESS (DIRECT ASSAULT ON WITNESS)

Motive (greed, hate, love, revenge, a good plea agreement, etc.);

Interest (witnesses possible benefit for testimony -- expert being paid, stand to inherit, etc.);

Bias and Prejudice family or employment relationships (weren’t subpoenaed -- wanted to help; do just about anything for your son)

Prior Felony Conviction within 10 years, or misdemeanor involving dishonesty.

Failure to Report an Event Didn’t contact police, therapists, go to hospital, didn’t tell your wife.

Discrediting the Testimony (you accept the witness’ honesty, but get her to agree to the problems):

Perception Event occurred quickly, unexpectedly, witness frightened or surprised, area dark, turned back for a moment, distance from event.

Memory If statement at time is better for you, but witness has now changed testimony -- get them to agree that memory usually fades with time.

Inconsistent Statements. A favorite is asking which under oath statement was not true (don't call them a liar). Recall making a statement, who present, under oath, penalty of perjury, etc.

E. SPECIAL PROBLEMS, SPECIAL TECHNIQUES

Evasive Witnesses: Get them to state "I don't recall" or "I don't remember" as many times as possible. Horrible impression on judge or jury.

Explaining or Arguing Witnesses: Set boundaries and Control your witness. If witness continues running on ask the judge to admonish the witness. Shorten your questions so there less to argue with.

Expert Witnesses: Review their qualification. Object to expert qualification if not qualified in that special area. If expert did not follow proper procedures, get him or her to commit to the methodology of a good procedure. Then weigh his examination based on his own standard of a good procedure.

Loops: If you receive a particularly damning admission make the most of it by bringing it back at least three times as the preface to your next short questions.

- At the time you said you were so sorry and wouldn't beat her again, now you say you didn't touch her.
- Even though you were so sorry and wouldn't do it again, you NOW say she is the one that beat you.

If person makes a preposterous assertion, keep prefacing your question with that assertion and show inconsistent behavior.

E.g. So, you've NEVER hit your wife yet:

- you were convicted of assaulting her last year.
- Even though you've NEVER hit your wife, you sent her roses and an apology the day after you were arrested for assault.
- Even though you've never hit your wife, you have a bumper sticker that says "Don't spare the rod, Keep em barefoot and pregnant."

F. OBJECTIONS

The ultimate goal is an error-free trial and by objecting to material that may be improper, illegal, harmful or prejudicial, parties call the court's attention to questionable evidence. Objections are important for the purposes of appeal.

There are many possible objections that a party may raise. The four most common (and useful) objections are:

- 1) Foundation (evidence is not identified or connected to the testimony)
- 2) Hearsay (testimony given by one relating what was heard by another)
- 3) Relevance (evidence is Relevant if it bears directly to a point or fact)
- 4) Presentational (form of the question)

To make an objection, rise and say “Objection” and briefly state the legal ground for the objection (e.g. “Hearsay”, “Irrelevant”, “Privilege”, etc.)

Objection Corollaries

- 1) No Objection, No Ruling
- 2) No Ruling, No record
- 3) No record, No Appeal

G. BURDEN OF PROOF

Burden of Proof means the duty of proving the fact or facts in dispute on an issue. Burden of Proof contains two related concepts – “burden of persuasion” and “burden of production.”

Burden of Persuasion is the obligation to persuade the trier of fact (judge or jury) that a particular allegation is true.

Burden of Production is the threshold obligation to provide enough evidence to make the issue worth putting before the trier of fact.

There are varying degrees or levels of proof required, depending on the type of issue. In order from lowest to highest the most common burdens are:

Preponderance of the Evidence, Clear and Convincing and Beyond a Reasonable Doubt.

1) Criminal Law

In criminal litigation, the burden of proof is *always* on the state. The state must prove that the defendant is guilty. The defendant is *assumed* to be innocent and needs to prove nothing. (There are exceptions. If the defendant wishes to claim that he/she is insane, and therefore not guilty, the defendant bears the burden of proving his/her insanity. Other exceptions include defendants who claim self-defense or duress.)

In criminal litigation, the state must prove that the defendant satisfied each element of the statutory definition of the crime, and the defendant’s participation, “beyond a reasonable doubt.” This is the highest standard of proof required in courts of law. It is difficult to put a numerical value on the probability that a guilty person committed the crime, but legal authorities who assign numerical values generally say “at least 99%” certainty of guilt.

2) Civil Law

In civil litigation, the burden of proof is initially on the plaintiff. However, there are a number of technical situations in which the burden shifts to the defendant. For example, when the plaintiff has made a *prima facie* case, the burden shifts to the defendant to refute or rebut the plaintiff’s evidence.

Here, the plaintiff wins if the *preponderance of the evidence* favors the plaintiff (a “more probable than not” standard). For example, if the jury believes that there is *more than a 50%* probability that the defendant was negligent in causing the plaintiff’s injury, the plaintiff wins. This is a very low standard, compared to criminal law.

A few tort claims (e.g., fraud) require proof on a “*clear and convincing*” standard, which is higher than a “preponderance”, but less than “beyond a reasonable doubt.”

V. COURTROOM ETIQUETTE

Attire (What to Wear):

Dress as if going to church or other professional event. This shows the Court respect. Do not wear bathing suits, see through tops, no bra, shorts, tank tops, dirty clothing or message T-shirts or hats (e.g. “Legalize Marijuana”).

Addressing Parties/Judge:

Address the Judge when you are told it is your turn. Never interrupt the Judge. Stand when you speak to the judge, unless the Judge tells you otherwise and address the judge as “Your Honor.”

Children:

Make day care arrangements for your children. You will not be able to concentrate with your child playing or crying in the courtroom. It is also very disruptive to the Judge and other courtroom personnel, and most Judges will not allow children in their courtrooms. If you have someone under the age of 18 as a witness, especially in divorce cases, you must get the Judge’s permission by filing a written motion.

VI. MISCELLANEOUS

Do not take a cell phone or pager into the court. You cannot consult with someone while the hearing is going on. Phones ringing and pagers are very distractive.

Do not take recording devices into the court.

Do not take any weapon of any sort into the courthouse.

Use caution with taking soon-to-be new spouses to divorce hearings. They might not help your case. Also, do not schedule a new wedding date before the Judge has signed your divorce decree. Decrees are seldom signed at the final hearing in a contested divorce.

In no-fault divorce hearings leave the “bad stuff” out – it is unnecessary. Irreconcilable differences are all that is needed to dissolve the marriage. The only exception to this is when there is domestic violence and custody of the children is at issue. The bad stuff may be relevant as to who is the better custodial parent.

Some Judges have indicated that in divorce actions, they find it offensive and ridiculous when parties call their soon to be ex-spouse “Petitioner” or “Respondent”. Use his/her name instead. You will be told when it is your turn to question the opposing party. If the opposing party has an attorney, you should address the attorney unless you are cross-examining the opposing party.

Keep your emotions in check as much as possible. Emotional outbursts do not help your case – Control your anger.

The Judge cannot give either party legal advice. Many hearings are continued because one or both parties have not complied with Rules of Procedures or Statutes, or some issue indicates to the Judge that a person needs the advice of an attorney before they can proceed.

Decisions are not always given right away. It is not uncommon that you will receive the Judge’s decision in the mail two weeks after the hearing.

Know exactly what you are asking for. Don't assume that because there are children, that the Judge knows you want sole custody because you are concerned for their safety. Don't assume that all property and debts will split 50-50. Your notes should list in order, the most important issues first, on down to the least important issues.

Most Importantly: Consult with an Attorney If You Have Any Questions. Actions You Take on Your Own Can Be Difficult or Impossible to Amend.

VII. RESOURCES AND REFERENCES

MEDIATION IN SUPERIOR COURT

The Superior Court Alternative Dispute Resolution (ADR) Program offers mediation for parties in civil disputes, either before or after filing the lawsuit. Mediation is a confidential process facilitated by an attorney/non-attorney team skilled in the negotiation process. Agreement to participate in this program is voluntary. No legal rights are forfeited by attempting mediation. There is a fee. Most mediations are scheduled for half a day. Attorneys are welcome, but are not required. For more information, contact the ADR office at 779-6805.

CONCILIATION COURT

Conciliation Court serves people involved in domestic relations disputes such as divorce, child custody, visitation conflicts, and paternity issues. With the exception of court-ordered divorce education classes, all conciliation court services are free. Service offered include counseling, mediation (of child custody and visitation issues, i.e., parenting plans), custody evaluations, children of divorce support groups, and divorce education classes. For information, contact the ADR office at 779-6805.

SPECIAL MASTER

A Special Master may be a mental health professional, mediator or attorney who can assist in resolving domestic relations disputes, particularly about what is best for the child(ren) and can make decisions about the child(ren) if the parents are unable to do so.

When the Court appoints or parents hire a Special Master, they give the Special Master the power to make binding decisions about the child(ren).

COCONINO COUNTY LAW LIBRARY AND SELF-HELP CENTER:

Located in the courthouse at 200 N. San Francisco St. in Flagstaff.

The *Self-Help Center* carries over 50 free legal packets (some in Spanish) on children and family law, landlord-tenant law, protective orders, and other legal topics. The Self-Help Center offers a family law brief legal consultation for a fee.

The *Law Library* carries legal forms, Arizona and federal law, rules of court, and court opinions. The rules of court are probably some of the most important material to review. Please note that no one is allowed to remove material from the library, so you may want to bring money to make copies you may want to review at length. All of the public libraries have full sets of the Arizona Revised Statutes. These books are usually marked for reference only, and are not allowed to be checked out. Once again, you may want to bring money for any copies you may wish.

DNA-PEOPLE'S LEGAL SERVICES, INC.

DNA-People's Legal Services, Inc., located at 201 E. Birch Ave., is a private, non-profit law firm which provides free legal advice and representation to qualified low-income residents of Coconino County. The firm's focus areas include: family law, consumer issues, landlord/tenant, public benefits. Direct attorney representation is provided in high-priority cases in state, federal and tribal courts.

INTERNET

There are many legal website online. Some of these sites are listed below:

American Bar Association: www.abanet.org

Arizona Attorney's Toolbox: www.home.earthlink.net/~jjfir

Arizona Legislation: www.azleg.state.az.us

Arizona Revised Statutes Online www.azleg.state.az.us/ars/ars/htm

Arizona Supreme Court: www.supreme.state.az.us

Coconino County Law Library and Self-Help Center: www.coconino.az.gov/lawlibrary.aspx

DNA-People's Legal Services: www.dnalegalservices.org

Law Crawler Search Engine: www.lawcrawler.com

Maricopa County Self-Service Center: www.superiorcourt.maricopa.gov/ssc/sschome.html

State Bar of Arizona: www.azbar.org

VIII. DEFINITIONS

ADR -- Alternative Dispute Resolution. A process to resolve a dispute in lieu of traditional litigation, e.g. mediation, arbitration or settlement conferences.

Affidavit -- A written statement of facts, confirmed by the party's oath before a notary.

Allegation -- A claim or statement of what a party intends to prove; the facts as one party claims them to be.

Answer -- Formal written statement by a defendant setting forth his/her grounds for defense. The defendant may deny any or all allegations in the complaint.

Appeal -- A review by a higher court of the judgment or decision of a lower court.

Arizona Rules of Civil Procedure -- Rules governing civil litigation methods and practices.

Arrearage -- Total unpaid support owed, including child support, spousal maintenance and interest.

Arrest -- Taking physical custody of a person by lawful authority for the person of holding him/her to answer a criminal charge.

ARS -- Arizona Revised Statutes, the law promulgated by the state legislature.

Bail -- Surety given to gain release from legal custody and ensure court appearance.

Burden of Proof -- The necessity or duty of proving the fact or facts in dispute on an issue. Preponderance of the Evidence, Clear and Convincing and Beyond a Reasonable Doubt are common levels of proof that must be proved.

Case Number -- Number assigned by the clerk used to identify each case.

Civil Action -- Every non-criminal lawsuit.

Closing Statement -- The final statement by the parties to the Judge summarizing the evidence that they think they have established and the evidence that they think the other party has failed to establish.

Common Law -- Judge or court-made law.

Contempt of Court -- Any act or statement, calculated to embarrass, hinder, or obstruct the court in administration of justice or lessen the court's authority.

Continuance -- Postponement of a hearing or trial to a later date.

Conviction -- Judgment of guilt against a criminal defendant.

Counter-claim -- A claim by the defendant against the plaintiff.

Court Technician (Clerk) -- The Court Technician is responsible for marking and filing the exhibits, keeping brief summaries of what transpires during the hearings and sending out these hearing minutes to the parties.

Court Reporter -- The Court Reporter keeps a word for word recording of the proceedings. A party can request that the reporter prepare a transcript of the proceedings, but it can be expensive.

Cross-Examination -- To question the opposing party's witness after he/she has been questioned by the party who called him/her. When cross-examining a witness, a party is allowed to ask more leading questions than during direct examination.

Damages -- Monetary compensation recoverable by a person who suffered loss or injury through the unlawful act or negligence of another person.

Decree -- Final order or judgment signed by the judicial officer and filed with the Court.

Default Judgment -- Judgment entered because the defendant failed to answer or appear.

Defendant -- Party defending or denying the allegation; the accused party in a criminal action.

Direct Examination -- The initial questioning of a witness by the party who called the witness.

Discovery -- Fact disclosures by the parties.

Evidence -- Any matter, presented at hearing or trial, for the purpose of persuading the court or jury of the correctness of the party's position.

Ex parte -- Only one party appears before the court.

File -- term used to indicate that a document is accepted by the Court Clerk and made a part of the official court record in a case.

Hearing -- Court appearance where evidence and/or testimony is presented.

Hearsay -- A statement made by someone other than the witness, offered to prove the truth of the matter asserted. A document can be hearsay. There are many exceptions to the Rule. See Rules of Evidence 801-806.

Impeach -- Introduce evidence to contradict testimony or question credibility.

In Forma Pauperis -- To proceed without prepayment of court costs or filing fees.

Interrogatories -- A part of the Discovery process where written questions, propounded by one party, are served on the other party who then provides written answers under oath.

Irrelevant -- The testimony or evidence has no consequence to the determination of action. See Rules of Evidence 401-408.

Judgment -- A decision by a court that establishes the rights and duties of the parties in an action or proceeding.

Judicial Officer -- Commissioner, Judge, Justice of Peace, Magistrate, Administrative Law Judge or other person legally designated with authority to decide legal issues.

Jurisdiction -- Court's legal authority or power to make decisions in a given case.

Minute Entry -- Official Record of what happened in the court.

Motion -- An application to the Court, either written or oral, for a rule or order.

Objection -- Party declaration that a particular matter under consideration is not proper or legal and requests the court to rule on the admissibility. Used to call the court's attention to improper evidence or procedure.

Opening Statement -- Outline or summary of the nature of the case and of the anticipated proof a party will present during the hearing.

Order -- A ruling or direction of the court made and entered in writing

Party -- Person or Entity named in a case (Example: Petitioner/Respondent; Plaintiff/Defendant)

Petitioner/Plaintiff -- This is the party who files the action. In domestic relations, the filing party is usually called the Petitioner. In civil actions the person is called the Plaintiff.

Process Server -- A person authorized by Arizona Revised Statutes to deliver or serve court papers pursuant to the Arizona Rules of Civil Procedure.

Pro per (Pro se) -- A person who appears before the court on his/her own behalf.

Record -- This consists of all pleadings, motions and documents filed with the Court, together with everything entered into evidence, and transcripts and recordings of the court proceedings.

Respondent/Defendant -- This is the party who is being sued. In domestic relations, the person being sued is usually called the Respondent. In civil or criminal actions, the person being sued is called the Defendant.

Re-Direct -- The questioning of a witness by a party after the opposing party has cross-examined him/her. Usually the purpose is to try to clarify or reverse any damaging or misleading testimony that was brought out on cross-examination.

Rules of Procedure -- Arizona Rules of Civil Procedure and Local Rules of Practice.

Service -- Serving writs, summonses or other court papers on a party. The party or witness must be given a true copy of the document to be served (pleading, subpoena, etc.) in a way that is authorized by the Court or the Rules of Procedure. Failure to properly serve a document can result in delays or dismissal.

Subpoena -- Command requiring a witness to appear at a hearing and give testimony. Failure to attend could result in contempt of court.

Subpoena Duces Tecum -- Command requiring to a witness to produce at a trial or hearing documents or other items in his/her possession.

Summons -- Formal command of the court, directed to the defendant/respondent that an action has been brought and that an answer is required.

Temporary Restraining Order -- Prohibits a person from doing an action which is likely to cause irreparable harm. The order is intended to last until a hearing can be held.

Testimony -- Evidence given orally by a competent witness under oath or affirmation.

Venue -- The geographical location where a case may be tried.

With Prejudice -- A declaration which dismisses all rights. A judgment barring the right to bring or maintain an action on the same claim.

Without Prejudice -- A declaration that no rights or privileges of the party concerned are waived or lost. These words, in a dismissal action, maintain the right to bring a subsequent suit on the same claim.

Witness -- One who personally sees or perceives a thing. An eyewitness. One who testifies to what he/she has seen, heard or otherwise observed.